

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Develop a
Successor to Existing Net Energy Metering
Tariffs Pursuant to Public Utilities Code
Section 2827.1, and to Address Other Issues
Related to Net Energy Metering.

Rulemaking 14-07-002
(Filed July 10, 2014)

**APPLICATION OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION
FOR REHEARING OF DECISION 18-09-044**

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Pursuant to Public Utilities Code Section 1731(b)(1) and Rule 16.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Solar Energy Industries Association (“SEIA”) files this Application for Rehearing (“Application”) of Decision 18-09-044 (“Decision”), was issued on October 5, 2018. Section 1731(b) requires that an application for rehearing be filed no later than 30 days after the date of issuance of the decision for which rehearing is sought. This application for rehearing is timely filed.

I. INTRODUCTION AND SPECIFICATION OF ERROR

The Decision adopts several consumer protection measures associated with residential contracting for solar energy. Primary among these protections is the development of an information packet designed to enable consumers to make an informed decision about installing solar on their single-family homes and taking service under a net energy metering successor tariff. The Decision requires the three major investor owned utilities (“IOUs”) to verify that solar customers have received and read the information packet. This will be accomplished by having the IOUs configure their interconnection portals to require solar providers to upload signed copies of these documents in order to obtain interconnection approval. The Decision requires a “wet,” i.e., handwritten, signature on the signature page of the information packet.

SEIA and its member companies agree with the Commission that there is a need to educate consumers about solar technology and transactions to ensure they have a successful experience with their solar systems and, in this regard, support the development of the information packet. However, the Decision's requirement of a wet signature on the information packet constitutes reversible error.¹ The Commission should grant rehearing and issue an order on rehearing that eliminates the requirement of a wet signature on the signature page of the information packet.

II. THE WET SIGNATURE REQUIREMENT VIOLATES CALIFORNIA'S UNIFORM ELECTRONIC TRANSACTIONS ACT

By requiring a customer's wet signature on the information packet the Commission has not proceeded in the manner required by law. The Decision dismisses assertions that such requirement is unlawful by opining that it "sees no conflict" between that directive and the Electronic Signatures in Global and National Commerce Act ("E-SIGN Act").² While, the Decision's conclusion that the E-SIGN Act is not applicable to the wet signature requirement is questionable,³ the Decision's failure to address the implications of the California's Uniform Electronic Transactions Act ("UETA") on the requirement results in reversible error. The UETA provides, in applicable part, that "[i]f a law requires a signature, an electronic signature satisfies the law."⁴

¹ See CA PU Code Section 1757.1(a)(2) ("the commission has not proceeded in the manner required by law").

² Decision, p. 33.

³ The Decision (p. 33) reasons that "[t]he E-SIGN Act, however, concerns interstate and foreign transactions, and further requires customer consent in order to legitimate the exclusive use of electronic records or documents." Given the national presence of some solar companies operating in California, it cannot be definitively stated that certain of the transactions in question could not be viewed as within the rubric of "interstate commerce." As for the referenced customer consent requirement under the E-SIGN Act, that consent pertains to receipt of the documents related to the transaction solely in electronic format. Such consent is not an issue with respect to the information packet, as the Decision (p. 22) requires the information packet to be available in both paper and electronic format.

⁴ CA Civil Code Section 1633.7(d)

Thus the Commission errs in requiring a customer's wet signature on the information packet

While the Decision does not offer any particular source of authority for its determination to require a wet signature on the information packet, this requirement cannot be sustained under even the broadest statement of Commission authority, Section 701 of the Public Utilities Code. Specifically, although Section 701 affords the Commission broad authority to "supervise and regulate every public utility in the State" and to "do all things, whether specifically designated in this part or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction," the California courts have established clear boundaries on this authority. The wet signature requirement clearly exceeds those boundaries.

The California Supreme Court has noted, "[w]hatever may be the scope of [the Commission's] regulatory power under [Section 701], it does not authorize disregard by the commission of ... restrictions upon its power found in other provisions of the act or elsewhere in general law."⁵ Thus while Commission's jurisdiction may extend to the activities of a solar developer vis-à-vis applying to interconnect customers to the Commission jurisdictional utility distribution grid, including the provision of the requisite information packet, it cannot exercise that jurisdiction in a manner which conflicts with other provisions of law. The Decision's requirement of a wet signature on the information packet is in direct violation of California's UETA. Accordingly, the Commission must grant rehearing and issue an order on rehearing that eliminates the requirement of a wet signature on the signature page of the information packet.

III. CONCLUSION

The Decision's requirement of a wet signature on the information packet constitutes reversible error. The Commission must grant rehearing in order to rectify this legal error.

⁵ *Pac. Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 62 Cal. 2d 634, 653 (1965).

Respectfully submitted this 5th day of November, 2018, at San Francisco, California.

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